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Supreme Court of the United States

No. 760

BRIEF OF RESPONDENT IN OPPOSITION

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1960.

No. 760

WISCONSIN EMPLOYMENT RELATIONS BOARD,
Petitioner,

vs.

LOCAL 248, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO,
Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Wisconsin

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BRIEF OF RESPONDENT IN OPPOSITION.

OPINIONS BELOW; JURISDICTION.

The material in the Wisconsin Employment Relations Board Petition under the headings "Opinions Below" and "Jurisdiction" being adequately set forth, Respondent adopts the same for purposes of Brief for Respondents.

QUESTION PRESENTED.

Whether the jurisdiction of the Wisconsin Employment Relations Board was preempted by the Labor Management Relations Act of 1947, as amended, (61 Stat. 136, 29 U.S.C. 151, *et sez.*) when the State Board enjoined the

Respondent Union from imposing fines levied against its own members who violated a union rule against crossing its picket line during the course of a strike.

STATUTES INVOLVED.

The pertinent provisions of the National Labor Relations Act, as amended, and the Wisconsin Employment Peace Act are adequately set forth in the Petitions.

STATEMENT.

The litigation involves the Allis-Chalmers Manufacturing Company of West Allis, Wisconsin, who had filed an unfair labor practice charge against the Respondent Union before the Wisconsin Employment Relations Board alleging that the Union was attempting to coerce and intimidate its own members, employees of the Company. (R. 151-154)

The Company is engaged in interstate commerce, and the Union is duly certified by the National Labor Relations Board as the exclusive bargaining agent for the production and maintenance employees of the Company. (R. 159)

In compliance with its Constitution the Respondent Union, on February 2, 1959, called a strike against the Company when all efforts for a new labor contract failed. (R. 157)

Concomitant with the strike peaceful picket lines were established outside the Company gates advertising the event and the nature of the strike to those about to enter the plant. During the course of the strike a number of Union members crossed the picket lines to enter the plant to work, contrary to the Union's decision. (R. 170)

Letters from the Union were thereupon addressed to these members warning them that their conduct might

subject them to trial and penalty by the Union. (R. 158)

Following the settlement of the strike and after a new contract was entered into between the Company and the Union, individual members of the Union filed charges against those members who had crossed the picket lines to enter the plant for the purpose of offering their labor to the Company while the strike was in progress. (R. 165, 167)

Trials were conducted in accordance with the Union's Constitution, and each of the members who had been charged with conduct unbecoming Union members appeared in person or with counsel, or both, before the Trial Committee. (R. 168-175)

Before the completion of the trials the Company filed a Complaint against the Union with the Wisconsin Employment Relations Board alleging that the threat of imposition of fines against the members, employees of the Company, was in the nature of coercion and intimidation and in violation of the Wisconsin Employment Peace Act, Chapter 111 of the Wisconsin Statutes. (R. 151-156)

The trials having been completed, the Trial Committees found that each of the offending members engaged in individual bargaining by accepting the terms of the Company when the same were rejected by the Union, their duly authorized collective bargaining agent; that each failed in their duty and obligation of membership; that they failed to acquit themselves as loyal and devoted members of the Union; and finally, that each offending member, though it was his duty to support the strike by the Union, gave aid and comfort to the Company against which the whole of the membership was then on strike (R. 168-178)

The offending members were found guilty of conduct unbecoming Union members and were fined in various

amounts ranging from Ten ($10.00) Dollars to One Hundred ($100.00) Dollars, depending upon the circumstances of the individual violation. (R. 177-178)

Upon stipulation of these facts the Wisconsin Employment Relation Board, in opposition to the Respondent Union's contention that the subject matter was not one over which it had jurisdiction since it falls within the area of regulation of the National Labor Relations Act of 1947, as amended, nevertheless entered its findings, conclusion and order enjoining the Union from, "(a) Threatening any employee of the Allis-Chalmers Manufacturing Company with punishment by the imposition of a fine, or attempting to impose or imposing or enforcing any punishment upon any employee of the Allis-Chalmers Manufacturing Company because such employee crossed the picket lines of the Respondent and performed work for the Complainant Employer during the strike." (App. p. 55)

The Circuit Court of Milwaukee County enforced the order of the State Board. (App. p. 21-29)

The Supreme Court of Wisconsin reversed (App. p. 1-16), saying:

> ". . . it is apparent that the arguments, in favor of holding that the activity of a Union which fines a member for crossing a picket line in violation of the Union's constitution and by-laws is protected by the Labor Management Relations Act are too potent to permit us to determine that such activity is not 'arguably within the compass of Sec. 7 or 8 of the Act.' This being the case, no state agency or court, but only the National Labor Relations Board has jurisdiction to determine whether such activity is protected by the proviso of Section 8(b)(1)(A) of the Act. *San Diego Unions* v. *Garmon*," 359 U.S. 236, 79 Sup. Ct. 773, 3 L. Ed. (2d) 775.

ARGUMENT.

A. The decision below is clearly correct.

What is pointed up in this case is the coincidence between the Federal Law, Sec. 7 and Sec. 8(b)(1)(A) of the Labor Management Relations Act, and Sec. 111.04 and Sec. 111.06(2)(a) of the Wisconsin Statutes. (App. p. 6-7) However, the National Labor Relations Act contains a proviso to Sec. 8(b)(1)(A) which will be discussed later.

It is crystal clear that both the State and Federal governments have enacted legislation prohibiting coercion or intimidation of employees or interference with their rights granted them under the respective Acts. A close examination of the Sections of these Acts will demonstrate their identity to one another.

It has been long settled by this Court that where coercion, peaceful in character, is involved, it is the Federal Act which has exclusive jurisdiction and which must be followed for remedies rather than the State Act. *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, 338 U.S. 953; *San Diego* v. *Garmon*, 359 U.S. 236.

The Wisconsin Employment Relations Board concluded that the conduct of the Respondent Union in imposing a fine against its own members for going through a picket line to work in a struck plant was coercive. That being so, it is the National Labor Relations Board which must be asked to exercise its jurisdiction. *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468; *Garner* v. *Teamsters Union*, 346 U.S. 485.

In the instant case, there are no overt acts involved as would excite State jurisdiction. The case does not

involve mass picketing,[1] recurrent work stoppages,[2] or a claim for damages based upon violent conduct;[3] nor is it a proceeding where a member sues its Union at law for breach of its Constitution;[4] for it is only under these circumstances that this Court has upheld State action.

After citing *in extenso* the relevant sections of both the Federal and State Acts, the Supreme Court of Wisconsin said:

> "An examination of the above quoted statutory provision disclosed that sec. 111.04, Wis. Stats., provides substantially the same as does Section 7 of the Labor Management Relations Act. Likewise sec. 111.06(2)(a), Wis. Stats., corresponds closely to the aforequoted portion of Section 8(b)(1) of the Labor Management Relations Act except for the proviso provision of the latter, which reads as follows:
>
> > 'Provided, That this paragraph shall not *impair the right* of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;' (Italics supplied.)"

The Petitioner would characterize the proviso as a corridor of escape for State regulation. But both the legislative history of the proviso[5] and court and Board decisions disclose that its intent and purpose is to give strength to the "requirements and standards of membership in the union itself," thus classifying internal union affairs as protected activity.

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[1] **UAW v. WERB**, 351 U.S. 266.
[2] **Int. Union v. WERB**, 336 U.S. 245.
[3] **United Construction Workers v. Laburnum**, 347 U.S. 656.
[4] **Gonzales v. IAM**, 356 U.S. 617.
[5] **II Legis. Hist. 1141, 93 Cong. Rec. 4272.**

As was said by the Supreme Court of Wisconsin (App. p. 7):

> "The parties concede that a fine imposed by a union pursuant to its constitution and by-laws upon a member, who has violated such constitution and by-laws by crossing a picket line during a strike in order to continue his employment, is a union activity embraced within the scope of such proviso. If it were not, then there clearly would be preemption because, if the union conduct at issue here constitutes illegal coercion, it would be prohibited under the federal Act as well as the Wisconsin Employment Peace Act. Therefore, the crucial question is whether Congress by insertion of such proviso intended to make such an activity a protected one, or whether it intended that such union conduct should remain outside of the scope of Congressional regulation so that the states might regulate it if they so desire. It is the latter interpretation that was adopted by the majority members of W.E.R.B. and the trial court."

We need not reach to the position that the activity involved is protected absolute. It is enough if it is "arguably within the compass of Sec. 7 or sec. 8 of the (Labor Management Relations) Act." *San Diego Unions* v. *Garmon*, 359 U.S. 236.

"If it is," correctly stated the Supreme Court of Wisconsin, "then the state's jurisdiction is displaced and the issue must be decided by the National Labor Relations Board and not by the court of the states. This is because that is the agency which Congress has clothed with authority to determine such issue. The failure of such board to define the legal significance under the Act of a particular activity does not give the states power to act." (App. p. 8)

B. There is no conflict of decision.

The National Labor Relations Board has had opportunity to pass upon the issue whether the conduct involved in this proceeding falls within the orbit of the provision of Sec. 8(b)(1)(A). Its decisions have consistently held that it does. The U. S. Court of Appeals, Seventh Circuit in *American Newspaper Publishers Assn.* v. *NLRB,* 193 F. (2d) 782 held,

> "The proviso in Sect. 8(b)(1)(A) permits unions to enforce their internal policies upon their membership as they see fit."

The later Seventh Circuit decision, *Allen Bradley* v. *NLRB,* Case No. 13042, February 9, 1961, is simply to the effect that where the employer requests the union to bargain upon the subject of union fines growing out of a strike situation, the Union must entertain such request:

> "In our view, and we so hold, the proposals made by the Company presented a proper subject for collective bargaining, concerning which the Union was obliged by the act to bargain in good faith . . ."

In the case of *Sanders* v. *Int. Ass'n of Bridge, Structural & Ornamental Iron Workers,* 235 Fed. (2d) 271, where the issue of the legality of a provision in a union constitution, permitting the expulsion for life of a member found guilty of violating certain of its provisions, the court predicated the right of the union to act upon Sec. 8(6)(1)(A) of the Labor Management Act.

The petitioner has cited no contrary decision which is in conflict with Wisconsin's preemption determination. On the contrary, since *Garmon,* other states have complied with this Court's approach. See: *Dooly* v. *Auton,* (1960), 3 N.Y. 2d 91, 168 N.E. (2d) 356.

C. There is no important question of Federal Law.

That the National Labor Relations Board is entrusted with the exclusive administration of the Labor-Management Relations Act has been well established (Garmon). Petitioner has failed to show any reason for abandoning this principle.

CONCLUSION.

It is respectfully submitted that the petition for a writ of certiorari should therefore be denied.

Respectfully submitted,

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